

## § 16.227

record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the hearing officer. The person shall state specific grounds for nondisclosure in the motion.

(c) The hearing officer shall grant the motion to withhold information from public disclosure if the hearing officer determines that disclosure would be in violation of the Privacy Act, would reveal trade secrets or privileged or confidential commercial or financial information, or is otherwise prohibited by law.

### § 16.227 Standard of proof.

The hearing officer shall issue an initial decision or rule in a party's favor only if the decision or ruling is in accordance with law and supported by a preponderance of the reliable, probative, and substantial evidence contained in the record.

[Amdt. 16-1, as amended at 78 FR 56147, Sept. 12, 2013]

### § 16.229 Burden of proof.

As used in this subpart, the burden of proof is as follows:

(a) The burden of proof of noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

[Doc. No. 27783, 61 FR 54004, October 16, 1996, as amended at Amdt. 16-1, 78 FR 56147, Sept. 12, 2013]

### § 16.231 Offer of proof.

A party whose evidence has been excluded by a ruling of the hearing officer may offer the evidence on the record when filing an appeal.

### § 16.233 Record.

(a) *Exclusive record.* The transcript of all testimony in the hearing, all exhibits received into evidence, all motions,

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applications requests and rulings, all documents included in the hearing record and the Director's Determination shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

(b) *Examination and copy of record.* A copy of the record will be filed by the FAA Part 16 Docket Clerk in the Federal Docket Management System (FDMS). Any person desiring to review the record may then do so at <http://www.regulations.gov>.

[Amdt. 16-1, 78 FR 56147, Sept. 12, 2013]

### § 16.235 Argument before the hearing officer.

(a) *Argument during the hearing.* During the hearing, the hearing officer shall give the parties reasonable opportunity to present oral argument on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The hearing officer may direct written argument during the hearing if the hearing officer finds that submission of written arguments would not delay the hearing.

(b) *Posthearing briefs.* The hearing officer may request or permit the parties to submit posthearing briefs. The hearing officer may provide for the filing of simultaneous reply briefs as well, if such filing will not unduly delay the issuance of the hearing officer's initial decision. Posthearing briefs shall include proposed findings of fact and conclusions of law; exceptions to rulings of the hearing officer; references to the record in support of the findings of fact; and supporting arguments for the proposed findings, proposed conclusions, and exceptions.

[Doc. No. 27783, 61 FR 54004, October 16, 1996, as amended at Amdt. 16-1, 78 FR 56147, Sept. 12, 2013]

### § 16.237 Waiver of procedures.

(a) The hearing officer shall waive such procedural steps as all parties to the hearing agree to waive before issuance of an initial decision.

(b) Consent to a waiver of any procedural step bars the raising of this issue on appeal.